

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001680-ME

L.K.B.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TRACI BRISLIN, JUDGE
ACTION NO. 16-AD-00022

CABINET FOR HEALTH & FAMILY
SERVICES,
COMMONWEALTH OF KENTUCKY;
AND S.A.W. (A MINOR CHILD)

APPELLEES

AND
NO. 2016-CA-001681-ME

L.K.B.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TRACI BRISLIN, JUDGE
ACTION NO. 16-AD-00023

CABINET FOR HEALTH & FAMILY,
SERVICES,
COMMONWEALTH OF KENTUCKY;
AND T.M.L.B. (A MINOR CHILD)

APPELLEES

AND
NO. 2016-CA-001682-ME

L.K.B.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TRACI BRISLIN, JUDGE
ACTION NO. 16-AD-00024

CABINET FOR HEALTH & FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND L.W.A., JR. (A MINOR CHILD)

APPELLEES

MEMORANDUM OPINION AFFIRMING

** ** * * * * *

BEFORE: KRAMER, CHIEF JUDGE; DIXON AND NICKELL, JUDGES.

L.K.B. (Mother) appeals the Fayette Family Court's October 2016 orders terminating her parental rights as to her three minor children. In accordance with *A.C. v. Cabinet for Health and Family Servs.*, 362 S.W.3d 361 (Ky. App. 2012), counsel for Mother filed an *Anders*¹ brief stating that the appeal is frivolous, which was accompanied by a motion to withdraw as counsel. After a careful review of the record, we affirm. We grant counsel's motion to withdraw by separate order.

In 2013, the Fayette Family Court entered an emergency custody order, committing Mother's three children to the care of the Cabinet for Health and

¹ *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

Family Services. Mother was ordered to comply with the Cabinet's case plan to regain custody of her children. The children have remained in the custody of the Cabinet since that time. As of the 2016 final hearing, all three are placed in the same foster home.

The case plan required Mother to utilize services provided by the Cabinet to make several lifestyle changes. She was required to take necessary steps to maintain employment, obtain stable housing, participate in visitation, and obtain mental health treatment. Also, most importantly, she was required to not permit individuals in her home who pose a threat to her children's safety. After years of not fully complying with the case plan, the Cabinet petitioned to terminate Mother's parental rights in February 2016. Ultimately, a three-day hearing was held in August and September 2016. Mother was present the first two days, however, she failed to appear the final day on September 22, 2016. Appointed counsel reported she was unable to contact Mother shortly after the second day of the hearing, despite numerous attempts.

At the conclusion of the hearing, the family court terminated Mother's parental rights, finding clear and convincing evidence of neglect as to all three children. The court further found it was in the best interest of the children to terminate Mother's parental rights and found several of the enumerated grounds in KRS² 625.090(2) to be present.

This appeal followed.

² Kentucky Revised Statute.

Mother's appointed counsel filed a motion to withdraw accompanied by an *Anders* brief stating her belief that no meritorious assignment of error exists in Mother's case. Appointed counsel is permitted to file a motion to withdraw and a supplemental *Anders* brief in involuntary termination of parental rights cases when a thorough review of the record yields no meritorious issues to raise on appeal. *A.C.*, 362 S.W.3d at 371.

Mother was given thirty days to file a *pro se* brief, which she did not. Pursuant to *A.C.*, we must conduct our own thorough review of the record to see if there is any merit to Mother's appeal. *Id.* Upon conducting a complete review of the record, the evidence and the hearing in this matter, we conclude that the family court's finding that termination was in the child's best interest was supported by substantial evidence.

We turn now to address the deficiencies in counsel's *Anders* brief. In *A.C.*, the Court extended the briefing procedures of *Anders* to appeals from orders terminating parental rights. *A.C.*, 362 S.W.3d at 371 (citing *Anders*, 386 U.S. 738, 87 S.Ct. 1396). The Court in *A.C.* was clear that it did not intend for *Anders* briefs to be used as an escape provision for counsel. The Court in *A.C.* set forth a defined "procedural blueprint to assist the bar in cases in which an *Anders* brief is warranted." *Id.* The Court emphasized that *Anders* briefs "should only be filed when appointed counsel has conducted a thorough, good-faith review of the record and can ascertain absolutely no meritorious issue to raise on appeal." *Id.* (citing *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400). Counsel should, at a minimum, review

the circuit court's (1) neglect and/or abuse determination; (2) finding of unfitness under KRS 625.090(2); and (3) best-interests determination. *Id.* Once counsel has reached the conclusion that the appeal is frivolous, counsel "should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to ***anything in the record that might arguably support the appeal.***" *Id.* (citing *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400) (emphasis added). Accordingly, the *Anders* brief must refer to "anything in the record that might arguably support the appeal[,]" and objectively demonstrate the issues identified are wholly frivolous. *Id.* The brief in this case wholly fails to meet this standard.

Anders briefs must also conform to CR 76.12(4). *Id.* Counsel is required to inform the court "whether the argument was preserved regardless of its lack of merit[, provide] a thorough recitation of the facts, a concise and well-reasoned analysis of the issues, and appropriate citations to the record of law." *Id.* The brief in the present case consists of a partial page for the statement of the case, single spaced. The "argument" section is slightly over one page and a substantial portion of that blindly repeats the standards for filing an *Anders* brief.

In sum, this brief fails to conform to the requisites of *A.C.* Counsel for Mother is hereby cautioned that future briefs of this caliber are not acceptable to the Court and may result in sanctions.

For the foregoing reasons, the order terminating parental rights and judgment thereon by the Fayette Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, CABINET
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